

## **REMARKS**

Claims 1-5 have been amended as shown above pursuant to Examiner's comments.

### **35 U.S.C. § 102**

The examiner has rejected claims 1 & 2 as being anticipated by Whittet (U.S. Patent Application 2004/0054605).

For a 35 U.S.C. § 102 rejection, it is well established case law that "a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

The application in Whittet referenced by examiner serves an entirely different purpose than the invention of the applicant. In addition, the application in Whittet does not provide the same functionality as Applicant's disclosure. The application in Whittet is designed for perspective buyers to identify a real estate listing. The purpose of Applicant's invention, by sharp contrast, is for use by a real estate broker. Applicant's invention allows a broker to match properties with potential buyers so that the broker can facilitate a transaction between the buyer and seller. This process does not require a specific buyer inquiring about property as Whittet's process does. Instead, Applicant's invention allows a buyer and seller to be matched to save significant time and effort from all parties

involved. The disclosure in Whittet does not anticipate nor possess this utility. Thus Whittet cannot be said to possess the elements of the claims in Applicant's disclosure.

Examiner is respectfully requested to reconsider the rejection of claims 1 & 2 under 35 U.S.C. § 102 in light of these amendments and the foregoing comments.

### **35 U.S.C. § 103**

#### **Claims 3-6 are rejected over Whittet in view of Zakaria**

Examiner had rejected Claims 3-6 under 35 U.S.C. 103 as being unpatentable over Whittet in view of Zakaria (U.S. Patent Application 2002/0184135).

In order to establish a *prima facie* case of obviousness under 35 U.S.C. § 103, the examiner must demonstrate that there is a suggestion or motivation, either in the references themselves, or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine the reference teachings. Furthermore, the prior art references must teach or suggest all of the claimed features. It is well settled law that the prior art itself must provide the motivation for a proposed alteration of a reference. Ex parte Chicago Rawhide Manufacturing Co., 220 U.S.P.Q. 351, (B.O.P.A. 1984). Moreover, the suggestion must be plain and clear or the rejection is untenable. Fromson v. Offset Plate, Inc., 225 U.S.P.Q. 26, 32 (Fed. Cir. 1985); Kimberly-Clark Corp. v.

Johnson & Johnson, 223 U.S.P.Q. 603, 610 (Fed. Cir. 1984). The Examiner is not free to pick bits and pieces from the prior art and, with the hindsight benefit of applicants' disclosure, attempt to reconstruct the invention. Orthopedic Equipment, Inc. v. U.S., 217 U.S.P.Q. 193, 199, (Fed. Cir. 1983).

An invention is often the product of devices that preceded it. It is truly a rare invention that does not incorporate any existing technology in its components. If all of the elements of applicant's invention were disclosed by two references, and only a minor borrowing of elements between the two references is necessary to achieve applicant's invention, then this would be a strong case of obviousness. In rejecting claims 3-6, however, Examiner has combined diverse elements of two software applications which differ significantly from applicant's invention. As stated earlier, Examiner is not free to pick bits and pieces from the prior art and, with the hindsight benefit of the applicant's disclosure, attempt to reconstruct the invention. Orthopedic Equipment, Inc. v. U.S., 217 U.S.P.Q. 193, 199, (Fed. Cir. 1983). Yet, in combining these two references to form the present invention, this is precisely what Examiner is doing. The present invention is a significant departure from the references cited by the Examiner.

As stated above the application in Whittet does not function in a similar fashion nor serve an identical function as Applicant's invention. The Applicant does much more than simply provide a listing of real estate as Whittet does. While Zakaria may provide the ability to narrow down property listings based on value, the combination of the this function and Whittet till fall short of the capability of Applicant's program. The applicant has essentially designed an

online exchange designed for brokers in a fast paced field to quickly and efficiently match sellers of specific property with interested buyers. No combination of the systems in Whittet and Zakaria can be assembled to create such a functionality. Consequently, examiner is respectfully requested to reconsider the rejection of claims 3-6 under 35 U.S.C. § 103 in light of the amendments to the claims and the foregoing comments.


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## **CONCLUSION**

In view of the foregoing amendment and remarks, it is believed that this Application is now in condition for allowance. Early and favorable reconsideration is respectfully solicited.

If the Examiner has any questions regarding the foregoing amendment and remarks, or if prosecution of this Application could be furthered by a telephone interview, the Examiner is requested to telephone the Applicant's undersigned attorney.

Respectfully submitted,

By:   
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Date: December 11, 2006

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Non-provisional patent application of

Kenneth Gillespie

Group Art Unit: 3625

Application No: 10/780,541

Examiner Name: Matthew S. Gart

For: SYSTEM TO BROKER AND LOCATE HIGH VALUE PROPERTY

Filing Date: February 17, 2004

Mailing Date of

Office Action: August 11, 2006

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Mail Stop Response

**Date of Deposit: December 11, 2006**

I hereby certify that this Response to Office Action and fee are being deposited with the United States Postal Service via First Class Mail on the date indicated above, addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, Mail Stop Response.

  
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Date: December 11, 2006

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